

LAVADA S. JACKSON

IBLA 84-749

Decided October 10, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer W 86937.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:  
Known Geologic Structure--Oil and Gas Leases: Noncompetitive  
Leases

Sec. 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b) (1982), provides that lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding. If lands are determined to be within a known geologic structure prior to issuance of a lease, BLM has no authority to exercise discretion in the matter and must reject a noncompetitive oil and gas lease offer for such lands.

APPEARANCES: LaVada S. Jackson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

LaVada S. Jackson 1/ appeals from a May 30, 1984, decision issued by the Wyoming State Office, Bureau of Land Management (BLM), rejecting in part her simultaneous oil and gas lease offer W 86937. By decision dated November 8, 1983, BLM notified appellant that she was the first drawn applicant for parcel WY 468 in the July 1983 simultaneous oil and gas drawing. The first year's rental of \$1001 and the executed lease forms were subsequently submitted by appellant as directed. Because a portion of the lands

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1/ LaVada S. Jackson is joined in her appeal by Fred H. Wetendorf, Jr., on behalf of Texas American Oil Corporation (TAOC). The statement of reasons indicates that TAOC has a written agreement with Ms. Jackson. The agreement is not contained in the file and appellant does not explain the nature of the interest created by the agreement. No BLM approval of any transfer of interest in the lease is contained in the case file. See 43 CFR Subpart 3135. As the record does not reflect that TAOC has an interest in the lease, we do not recognize Mr. Wetendorf to be entitled to practice before the Department in this matter. See 43 CFR 1.3.

in the offer were within the Wardel Unit Agreement, appellant was required to submit evidence of either unit joinder or permission from the unit operator to operate independently. By letter dated March 19, 1984, Gulf Oil Corporation, the unit operator, stated that it had no objections to the issuance of the lease without unit joinder.

The BLM decision on appeal states in part:

All oil and gas lease offers are subject to determination by our BLM District Offices as to whether any of the lands to be issued are on a Known Geological Structure of a producing oil or gas field as of the date of the last report. This report is required by Regulation 43 CFR 3112.5-2(b).

The District Manager reports the following lands are within an undefined addition to the Worland Known Geological Structure effective 12-9-83:

Sixth Principal Meridian, Wyoming  
T. 51 N., R. 96 W.  
Sec. 17: E 1/2 NE 1/4, SW 1/4 NE 1/4, SE 1/4  
34: SE 1/4

containing 440.00 acres

The above lands are available for lease only in accordance with Regulation 43 CFR 3120. Therefore, oil and gas lease offer W 86937 is hereby rejected as to the above-described lands.

Oil and gas lease W 86937 is issued effective 6-1-84, as to the following lands:

T. 51 N., R. 96 W.  
Sec. 20: Lots 5, 36  
29: E 1/2, E 1/2 W 1/2, NW 1/4 NW 1/4

containing 560.24 acres

Advance rental in the amount of \$440.00 will be refunded at the end of the appeal period if no appeal is filed.

Appellant on appeal does not challenge the BLM determination that the lands excluded from her lease are within a known geologic structure (KGS). Rather she submits the following reasons to assert her entitlement to all the lands described in parcel WY 468:

The current application of the definition of "Known Geologic Structure" in [43] CFR 3100.0-5(a) has only recently come into usage. This represents a definite change from past application of the definition. This recent change is evidenced by the fact that the July 1983 Simultaneous Oil and Gas Listing of Parcels available for filing included under tract WY-468 the lands within the unit. Upon this basis, and notification of priority, including

all lands as originally posted in the listing, the winning lessee paid rentals on the basis of all lands as originally included in WY-468. The new application of the definition of "Known Geologic Structure" has become effective after the winning lessee's payment of rentals, and notice of priority as a winner of the drawing. The appealing parties should therefore benefit from their reliance on the representation made by the Bureau of Land Management that all lands in the original July 1983 Simultaneous Listing were available for lease issuance if won and if rentals were paid.

We find appellant's arguments to be based upon a mistaken understanding of the law.

[1] Section 17(b) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1982), provides that if lands to be leased are within any KGS of a producing oil and gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding.

The applicable regulation, 43 CFR 3112.5-2(b), provides:

If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

Thus, if lands embraced in a noncompetitive lease offer are designated as within a KGS at any time prior to issuance of a lease, the lease offer must be rejected as to those lands. Floyd L. Huenergarde, 88 IBLA 48 (1985). The Department has no discretion with respect to issuing a noncompetitive oil and gas lease for lands in a KGS. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). Frederick W. Lowey, 76 IBLA 195 (1983). Under 43 CFR 3112.5-2(b), supra, BLM is required to reject a lease offer in whole or in part where the lands in the offer are determined to be within a KGS at any time prior to lease issuance.

The fact that some of the lands in parcel WY 468 when listed in the July 1983 drawing were within the Wardel Unit Agreement approved effective March 21, 1983, would not preclude BLM from listing the lands in the simultaneous drawing. It was not the inclusion of the lands in the unit agreement but inclusion of the lands within the KGS that affected the leasing status of the land. BLM has not, as appellant suggests, made a new application of the definition of a KGS. It has merely applied the statutory prohibition against leasing noncompetitively land determined to be within a KGS.

Appellant has not submitted any evidence to demonstrate that BLM improperly determined that secs. 27 and 34, T. 51 N., R. 96 W., sixth principal meridian are situated within a KGS.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

